

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**

**FELIPE FRANCO, #1099251,**

**Petitioner,**

**v.**

**CIVIL ACTION NO. 2:18cv00638**

**HAROLD W. CLARKE, Director,  
Virginia Department of Corrections,**

**Respondent.**

**FINAL ORDER**

Before the Court is a Petition for a Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254, ECF No. 1, and the Respondent's Motion to Dismiss. ECF No. 13. In his Petition, the *pro se* Petitioner alleges violations of his constitutional rights in relation to his convictions in the Circuit Court for the County of Arlington for Conspiracy to Distribute Cocaine and Distribution of Cocaine, which resulted in a twenty-seven (27) year sentence of active incarceration in the Virginia state penitentiary.

The Petition was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Magistrate Judge's Amended Report and Recommendation filed December 9, 2019, recommends dismissal of the Petition without prejudice. ECF No. 23. On December 5, 2019, the Petitioner timely filed objections to the Report and Recommendation.<sup>1</sup> The Respondent has not responded

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<sup>1</sup> By Order dated December 31, 2019, the Court determined Petitioner's Objection to the original Report and Recommendation as timely and as applicable to the Amended Report and Recommendation. ECF No. 24.

to the Petitioner's objections and the time to do so has expired.


The Court, having reviewed the record and examined the objections filed by Petitioner to the Report and Recommendation, and having made *de novo* findings with respect to the portions objected to, does hereby **ADOPT** and **APPROVE** the findings and recommendations set forth in the Amended Report and Recommendation filed December 9, 2019. It is, therefore, **ORDERED** that the Respondent's Motion to Dismiss, ECF No. 13, be **GRANTED**, and that the Petition, ECF No. 1, be **DENIED** and **DISMISSED WITHOUT PREJUDICE**. It is further **ORDERED** that judgment be entered in favor of the Respondent.

Finding that the procedural basis for dismissal of Petitioner's § 2254 petition is not debatable, and alternatively finding that Petitioner has not made a "substantial showing of the denial of a constitutional right," a certificate of appealability is **DENIED**. 28 U.S.C. § 2253(c); *see* Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a); *Miller-El v. Cockrell*, 537 U.S. 322, 335–38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483–85 (2000).

Petitioner is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. Rule App. Proc. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a). If Petitioner intends to seek a certificate of appealability from the Fourth Circuit, he must do so **within thirty (30) days** from the date of this Order. Petitioner may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.

The Clerk shall forward a copy of this Final Order to Petitioner and to counsel of record for the Respondent.

It is so **ORDERED**.

  
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Raymond A. Jackson  
United States District Judge

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RAYMOND A. JACKSON  
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia  
January 2, 2020